

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BARTOLOME POGOSA, CARLOS POGOSA AND MARINO POGOSA,
ACCUSED-APPELLANTS.**

G.R. No. L-40297. February 20, 1984

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

In the defunct Court of First Instance of Leyte, BARTOLOME, CARLOS and MARINO all surnamed POGOSA were accused of murder in Criminal Case No. 486-Ormoc. The Second Amended Information reads:

"That on or about the 11th day of December, 1973, at around 8:00 o'clock in the evening at Bo. Ipil, this city, and within the jurisdiction of this Honorable Court, the above-named accused BARTOLOME POGOSA, CARLOS POGOSA and MARINO POGOSA, conspiring together, confederating with and mutually helping and aiding one another, with treachery and intent to kill, did and then and there willfully, unlawfully and feloniously attack, assault, strike and stab the person of EXPEDITO ENCABO, inflicting upon the latter mortal wounds which caused his death." (Expediente, p. 4.)

In a decision promulgated on February 11, 1975, the trial court rendered the following judgment:

"WHEREFORE, this Court finds the accused Bartolome Pogosa guilty beyond reasonable doubt as principal in the commission of the crime of Murder and this Court hereby sentences said accused BARTOLOME POGOSA, to LIFE IMPRISONMENT and to indemnify the heirs of Expedito Encabo in the sum of P12,000.00, with all the accessory penalties provided by law and to pay the costs.

"CARLOS POGOSA and MARINO POGOSA are found by this Court guilty beyond reasonable doubt as accomplices in the commission of the crime of Murder and this Court hereby sentences each of said accused Carlos Pogosa and Marino Pogosa to an indeterminate imprisonment of EIGHT (8) YEARS and ONE (1) DAY of Prison Mayor in its medium period as the minimum to FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of reclusion temporal in its medium period as the maximum and to jointly and severally pay the heirs of Expedito Encabo in the sum of Twelve Thousand Pesos (P12,000.00) with all the accessory penalties provided by law and to pay the costs. (Id., pp. 21-22.)

The case is now before Us on appeal by all the three accused.

Bartolome whose sentence is life imprisonment (reclusion perpetua) is the brother of Carlos and Marino is the son of Carlos.

The People's version of the facts is as follows:

"About 8:00 p.m. on December 11, 1973, Expedito Encabo, a security inspector of the Ormoc Sugar Company (OSCO), and his common-law wife Pacita Cuesta de Leon, were taking supper in their house in Bo. Ipil, Ormoc City, when they heard sounds of falling pieces of iron. Encabo went out to investigate the noise while his wife continued eating. A few minutes later, Pacita heard her husband calling for help, mentioning the names of Paredes and Medy Parrilla, both security guards in the nearby compound of OSCO (tsn., Jan. 22,

1975, pp. 4-5). She went to where her husband was calling for help some fifty meters away from their house and saw accused Bartolome Pogosa seeking forgiveness from Encabo for having caught him in the act of stealing iron scraps belonging to the Ormoc Sugar Company. Encabo refused to pardon Bartolome who had been caught stealing several times in the past, and, after a brief heated discussion between the two (tsn., pp. 29-38), Bartolome pulled out a hunting knife from his waist and stabbed Encabo in the stomach with it, despite efforts on the part of the latter to parry the thrust and wrest the weapon away from his assailant (tsn., pp. 42-43, id.,). Encabo fell to the ground face downwards, bleeding profusely. As Pacita tried to lift her husband, Bartolome pushed her away and stabbed Encabo several times more. (tsn., pp. 43-44, id.). Suddenly two persons appeared behind Encabo, whom Pacita later identified at the PC Headquarters as Carlos Pogosa and Marino Pogosa. Carlos Pogosa stabbed Encabo with a sharp pointed instrument, while Marino Pogosa struck the victim at his feet and back with an iron bar. Before the assailants left, Bartolome told Pacita not to bother helping him (Encabo) 'because he will surely die.' (tsn., pp. 8-10, id.). The wounded Encabo was rushed to the OSPA Farmers Medical Center by Security Guard Vicente Trinidad of OSCO, accompanied by Pacita (tsn., p. 11, id.). Five hours later, Encabo died.

"Dr. Rogelio Marson, Assistant City Health Officer of Ormoc City, conducted a post-mortem examination of Encabo's body and found the cause of death to be hemorrhage secondary to multiple stabbed wounds (Ex. E)." (Brief, pp. 2-3.)

It is the submission of the People that the crime committed was not murder but only simple homicide so that the penalties to be meted to the appellants should be accordingly reduced. The People's brief states:

"We agree with appellants' second assignment of error that the killing was not characterized by treachery. The following circumstances show that treachery was not present: (1) the meeting between accused Bartolome Pogosa and the victim was casual; (2) the stabbing was preceded by a heated discussion between them; and (3) although the victim was unarmed, he was able to put up a semblance of defense by trying to wrest the bolo away from his assailant before he was actually stabbed.

"Neither was evident premeditation present in the commission. The evidence does not show that appellants had deliberately planned to kill the deceased.

"The mitigating circumstance of voluntary surrender must be appreciated in favor of appellant Bartolome Pogosa for, as the evidence discloses, he (Bartolome) immediately surrendered to a certain Poton-og of the Ormoc City Police Department who brought him to the police headquarters. (tsn., pp. 228--290)." (Pp. 10-11.)

Bartolome admits having killed the deceased, Expedito Encabo, but he claims that he did so in self-defense. Carlos and Marino dis-claim presence at the scene of the crime.

On the whole the assignment of errors made by the appellants impugns the credibility of the prosecution witnesses while claiming credibility for their own testimonial evidence.

The appeal must fail except in respect of the denomination of the crime committed.

The testimony of Pacita Encabo is summarized in the People's version of the facts. Another witness was Olegario Paredes, an OSCO security guard, who said that he was ordered by Encabo to retrieve the scrap iron that had been stolen by Bartolome; that shortly after he left the two men, a shout for help was heard; that he saw Bartolome attacking Encabo with a bladed weapon even as the latter was avoiding the blows; and that Carlos and Marino approached the two adversaries.

Bartolome's claim that he acted in self-defense is too crude to be convincing. The testimony of Pacita Encabo and Olegario Paredes clearly shows that there was no unlawful aggression on the part of the deceased. Indeed under the circumstances he could not have been the aggressor. As Security Inspector for the OCSO whose scrap iron had been repeatedly stolen, he was in effect the aggrieved party so that in the confrontation with Bartolome he

was performing a lawful act - not an act of aggression. Moreover, he was not even armed for he was eating his evening meal when he left his house to investigate suspicious noises. Upon the other hand, it was Bartolome who was armed with a small bolo. Accordingly, even if it be assumed for the sake of argument, that the deceased had kicked and slapped Bartolome, the use of a bolo under the circumstances was not justified for there was no reasonable necessity for its use.

That Pacita was the common-law wife of the deceased and Olegario Paredes was his subordinate did not disqualify them as witnesses and it was for the trial court to appreciate the credibility of the evidence which they gave.

As to Carlos and Marino, their defense is alibi - a defense which is not only weak but also easily contrived. In this case the defense will not lie.

Carlos and Marino claimed that they were in their respective homes when the incident took place. But their respective homes were barely twenty meters away from the scene of the crime so that it was not impossible for them to be there. Moreover, they were positively identified by Pacita and Olegario in respect of their participation in the crime.

WHEREFORE, the judgment of the trial court is modified; Bartolome Pogosa is found guilty of homicide instead of murder; Carlos Pogosa and Marino Pogosa are found guilty as accomplices to the crime of homicide; Batolome Pogosa is hereby sentenced to suffer an indeterminate penalty of six (6) years and one (1) day of prision mayor, as minimum, to twelve (12) years and one (1) day of reclusion temporal, as maximum; Carlos and Marino Pogosa are each sentenced to suffer an indeterminate penalty of one (1) year of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor, as maximum; Bartolome shall indemnify the heirs of Expedito Encabo the sum of Thirty Thousand (P30,000.00) Pesos; and Carlos and Marino shall solidarily among themselves be subsidiarily liable for said amount if Bartolome be insolvent. Costs against the appellants.

SO ORDERED.

Makasiar (Chairman), Aquino, Concepcion, Jr., Guerrero, De Castro, and Escolin, JJ., concur.

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